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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Satellite Delivery of Network Signals
to Unserved Households for
Purposes of the Satellite Home
Viewer Act .

Part 73 Definition and Measurement
of Signals of Grade B Intensity

CS Docket No. 98-201
RM No. 9335
RM No. 9345

To: The Commission

COMMENTS OF MARANATHA BROADCASTING COMPANY, INC.

Maranatha Broadcasting Company, Inc. ("MBC"), licensee of independent television station WFMZ-TV, Channel 69, Allentown, Pennsylvania, through counsel, hereby responds to the FCC's *Notice of Proposed Rulemaking*, FCC 98-302, released November 17, 1998, in the above-captioned proceeding.

The FCC's proposal to redefine what constitutes a "Grade B" television signal, even for the limited purpose of saving thousands of households from losing satellite-delivered network programs from distant cities, threatens local broadcast service and disparages the service offered by every television broadcast station in the country to millions of viewers at the outer limits of their service areas and even beyond their Grade B contours, as currently defined. With one possible exception that will be discussed later, the term "Grade B contour" has a single, well-established meaning. That meaning should be preserved at all costs.

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The Grade B contour is used by advertisers and program distributors to measure the potential reach of a station's signal (although it is recognized that in many instances viewers receive service beyond the Grade B contour, particularly with the use of directionalized rooftop antennas).

It is also used, in some instances, to determine whether carriage of a particular television station would cause a cable system to incur additional liability for compulsory cable copyright royalty fees. It is in this context that the term "Grade B contour," on some occasions, has more than one definition. In 1976, the FCC revised its propagation curves in a way that was thought to more realistically reflect the actual reach of television signals. The effect of this change, for UHF stations, was to cause a significant reduction of the area within their Grade B contours. At the same time, Congress was revising the copyright laws, to permit cable systems to carry the signals of the local stations while, at the same time, paying compulsory license fees for the privilege of carrying the signals of distant stations. To assure that cable operators would not incur copyright liability for continuing to carry stations they were required to carry under the FCC's 1972 must-carry rules, Congress defined the "local service area of a commercial television station" by reference to the FCC's rules in effect on April 15, 1976, i.e., before the new propagation curves shrank the Grade B contour. 17 U.S.C. § 111(f).

Far from a historical anachronism, Congress's treatment of Grade B service in the 1976 Copyright Act embodies at least two important lessons for this proceeding. First, Congress's awareness of the importance of the Grade B contour for a variety of purposes calls into question the FCC's unsupported conclusion (*Notice*, ¶ 20) that Congress did not intend to "freeze" the definition of the Grade B contour as it existed at the time the Satellite Home Viewer Act was enacted. The FCC's conclusion is, at best, novel. Legislation must be interpreted in the context of the facts

understood by Congress at the time of enactment. If agencies possessed the authority to redefine terms referenced by the legislature, every law passed by Congress would be merely a work in progress. When Congress intends an agency to revisit the meaning of its regulations, it knows how to do so in clear, unambiguous terms. Second, far from showing that the world will continue in its orbit about the sun with different definitions of Grade B service, 1976 Copyright Act is an admonishment to the FCC to beware of the law of unintended consequences. Adoption of a new, higher standard to define Grade B service will embroil the FCC in a host of challenges to the use of the current Grade B contour embedded in other FCC rules and policies.

The Grade B contour is an element of the FCC's multiple ownership rules (Section 73.3555) and main studio rules (Section 73.1125). It is considered when the FCC assesses the effect of interference from new or modified television facilities on the service provided by other stations; or the possible loss of service when a station's transmitter site is moved. *E.g., Elba Development Corp. (KQTV)*, 55 P&F R.R.2d 647 (Rev. Bd. 1984). It is a factor in determinations whether a cable community is within a particular station's local television market and, therefore, whether the station is entitled to insist on carriage by the cable system in that community. *E.g., Report and Order in MM Docket No. 92-259*, 8 FCC Rcd 2965, 2977 (1993).

Once the FCC determines that its standardized measure of service is inappropriate for one particular purpose, it invites inevitable challenges to the appropriateness of that measure for other purposes. And such challenges, by their nature, will diminish the significance of Grade B service measured by the existing standard, and the importance of viewers who live within the "old" Grade B contour but outside the "new" Grade B contour.

The proposed redefinition of Grade B service, in addition to its inevitable effects on other regulations, will also erode the audience base for local broadcast television, and the support for news, public affairs and other public interest programming provided by local stations. Unlike cable operators, satellite services have no obligation to provide subscribers with access to local television signals. Although some satellite service providers do offer include antennas as part of installation packages, the typical satellite installation requires cumbersome switching between satellite and off-air services which has the effect of discouraging off-air viewing of broadcast signals. Of at least equal importance, the homogeneous antennas offered by satellite companies often are not suited to provide good reception at a particular location. This is particularly true for UHF signals. Thus, allowing satellite companies to meet customers' demands for network programming by delivering signals from stations that are sometimes thousands of miles away will inevitably lead to the erosion of audiences for all local stations, network and non-network alike

The resolution of the issue the FCC is seeking to address lies with Congress. Congress must reauthorize the Satellite Home Viewer Act in 1999. Assuming that it does so, Congress should assure the availability of network affiliates -- and other local stations -- by authorizing satellite companies to provide their subscribers with the signals of local stations, with the same rights and responsibilities

as cable operators. It is not for the FCC to address the issue through ad hoc measures that will injure local television broadcasting and open a Pandora's box of other regulatory issues.

Respectfully submitted,

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